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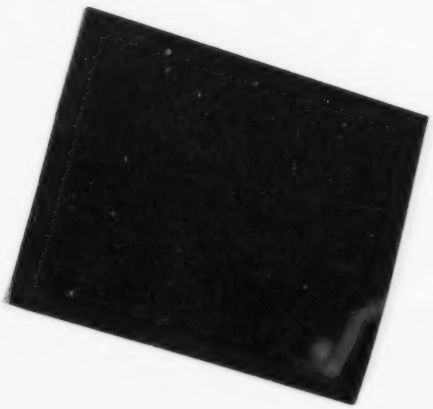
QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Cyprus and Kuwait.



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Cyprus

[Original: English]
[3 January 1997]

1. Cyprus does not face a problem of grave violations of human rights and fundamental freedoms committed by its authorities or any of its State organs.

2. In Cyprus there is no ad hoc legislation regarding restitution, compensation and rehabilitation of victims of grave violations of human rights and fundamental freedoms. We are considering the preparation of such legislation in the light of similar legislation enacted or proposed to be enacted in other countries. For any isolated cases of violations there exist a legal machinery for restitution and compensation of the victims in accordance with articles 35 and 172 of the Cyprus Constitution in conjunction with the Civil Wrongs Law, chapter 148. Supplementary legislative provisions are under consideration and will be drafted in line with existing legislation in countries which are members of the Council of Europe and in accordance with the conventions of that Council.

3. It is worth mentioning that Cyprus became a party to the European Convention on the Compensation of Victims of Violent Crimes and a bill entitled "Compensation to victims of violent crimes" is to be laid before the House of Representatives before the end of the year. By this law compensation will be paid to victims of violent crimes who cannot obtain compensation from other sources or from the culprit. Furthermore, the enactment of a law ratifying the above convention is now being pursued.

4. We take this opportunity to remind the Secretary-General and through him the Commission on Human Rights of the continuing grave violations of human rights of the people of Cyprus by the Turkish forces in the Turkish-occupied part of Cyprus ever since the Turkish invasion of Cyprus in 1974 and the continuing occupation of 37 per cent of its territory for which violations no effective remedy for the victims has been provided by Turkey.

Kuwait

[Original: Arabic]
[6 February 1997]

1. The Kuwait Constitution promulgated on 11 November 1962

Article 18, paragraph 1, of the Constitution stipulates that: "Private property is inviolable. No one shall be prevented from disposing of his property except as provided by law. No property shall be expropriated except for the public benefit, in the circumstances and the manner prescribed by law, and provided that equitable compensation is paid therefor".

Article 25 of the Constitution further stipulates that: "The State shall ensure social solidarity in the shouldering of burdens resulting from public disasters and afflictions and shall pay compensation to the victims of war damage and to any persons injured as a result of the discharge of their military duties".

Under article 42 of the Constitution, "No one shall be required to perform forced labour except in the circumstances provided for by law in a national emergency and in return for fair remuneration".

2. Legislative Decree No. 21 of 1979 concerning civil defence

Before reviewing the provisions of the articles that guarantee the right forming the subject of this report, reference must be made to the purpose of civil defence, as defined in article 1 of the above-mentioned Legislative Decree, namely the need to protect civilians and safeguard communications, buildings, installations, public institutions, private property and national works of art and archaeological treasures from the dangers of air raids and other acts of war or sabotage, to mitigate the effects of such acts if they occur and, in general, to ensure that work continues in a regular manner at public facilities in time of war, peace, martial law and public emergencies or disasters and to safeguard national security in these circumstances.

Although the aim is to safeguard the rights of individuals in general, the legislature in the State of Kuwait guarantees the right of the owners of landed property to compensation in respect of any decrease in the value of their property due to its requisitioning by order of the Council of Ministers. The right of owners of requisitioned movable property to compensation is also guaranteed (art. 8 of the above-mentioned Legislative Decree) and compensation is likewise payable to persons who suffer detriment as a result of civil defence operations on their property (art. 9).

3. Legislative Decree No. 65 of 1980 concerning public mobilization

The State of Kuwait also guarantees this right in the event of public mobilization proclaimed by decree, due to tension in international relations, a threat of war or the outbreak of war, in the manner provided for in Legislative Decree No. 65 of 1980 concerning public mobilization.

Under articles 11, 13 and 14 of the said Decree, anyone who is subjected to compulsory requisitioning is entitled to compensation, which is determined by evaluation committees. The persons concerned have the right to protest against the decisions of these committees, their protests being referred to a panel consisting of the president of a court, a judge and a representative of the body for the benefit of which the property is requisitioned or used.

Under the terms of article 26 of this Decree, non-Kuwaitis or their beneficiaries must be treated in the same way as Kuwaitis in regard to their entitlement to salary, remuneration or compensation if they die or are killed or injured after being called up, conscripted or assigned in accordance with the provisions of this Decree.

4. Legislative Decree No. 67 of 1980 promulgating the Civil Code

The Kuwaiti Civil Code guarantees compensation in respect of illicit acts in general that cause damage to other persons (Part One, Vol. I, Chap. 1, sect. (iii), paras. 227-261).

The said Code defines liability for illicit acts in the same way as the codes of other civilized States. It begins by defining liability for personal

acts and goes on to define a person's liability, in certain specific cases, for the acts of others and for damage caused by incorporeal things. In all these cases, the Code requires payment of compensation in respect of the damage resulting therefrom or entailed thereby.

The Code also stipulates that the State must assume liability for personal harm if it proves impossible to identify the person responsible for payment of compensation under the terms of the provisions governing responsibility or liability for illicit acts, unless the failure to identify the person responsible or liable therefor is attributable to a fault on the part of the victim or one of his heirs (art. 256). This provision is consistent with Islamic law, which stipulates that the Public Treasury must assume liability if the person responsible for making amends or for the payment of blood money is unknown.

5. Act No. 16 of 1960 promulgating the Penal Code

All acts that constitute serious violations of human rights and fundamental freedoms are designated as criminal offences in the Kuwaiti Penal Code, which prescribes appropriate penalties for their perpetrators. These acts include:

(a) Abduction, detention and trafficking in slaves

Article 178 of the Code stipulates that: "Anyone who abducts a person without his consent by forcing him to move from the place in which he is normally resident to another place and detaining him therein shall be liable to a penalty of up to seven years' imprisonment. If the abduction is effected by force, threats or deception, the penalty shall be a term of up to 10 years' imprisonment. If the victim is feeble-minded, insane or under 21 years of age, the penalty shall be a term of up to 15 years' imprisonment".

Under article 179: "Anyone who abducts a person who is insane, feeble-minded or under 21 years of age without using force, threats or deception shall be liable to a penalty of up to 10 years' imprisonment. If the purpose of the abduction is to kill, harm, rape or indecently assault the victim, force the victim to engage in prostitution or extort something from the victim or from others, the penalty shall be life imprisonment. However, if the abductor is the victim's mother, she shall not be liable to any penalty if she proves her good intentions and believes that she has a right to custody of the child".

Under article 180: "Anyone who abducts a person through the use of force, threats or deception with the intention of killing, harming, raping, indecently assaulting or forcing the said person to engage in prostitution or extorting anything from the said or another person shall be liable to the death penalty".

Under article 181: "Anyone who conceals an abducted person, while knowing that the said person has been abducted, shall be punished as though he himself had abducted the said person. If he is also aware of the purpose for which the said person was abducted, or of the circumstances in which the said person was abducted, he shall be liable to the same penalty as the abductor acting for that purpose or in those circumstances".

Under article 183: "Anyone who abducts, conceals or exchanges a newborn baby or falsifies its parentage shall be liable to a penalty of up to 10 years' imprisonment".

Under article 184: "Anyone who seizes, imprisons or detains a person in circumstances other than those provided for by law or without due regard for the legally prescribed procedures shall be liable for a penalty of up to three years' imprisonment and/or a fine of up to 3,000 rupees. If these acts are accompanied by physical torture or a threat to kill, the penalty shall be a term of up to seven years' imprisonment, to which may be added a fine of up to 7,000 rupees".

Under article 185: "Anyone who causes a person to enter or leave Kuwait with a view to disposing of the said person as a slave, and anyone who purchases, offers for sale or gives away a person as a slave, shall be liable of a penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees".

(b) Illicit sexual relations and rape

Article 186 of the above-mentioned Kuwaiti Penal Code stipulates that: "Anyone who has sexual intercourse with a woman without her consent, through the use of force, threats or deception, shall be punished by the death penalty or life imprisonment. If the offender is an ascendant of the victim or if he was one of the persons entrusted with her upbringing or welfare or vested with authority over her or if he was her servant or a servant of any of the above-mentioned persons, he shall be liable to the death penalty".

Article 187 further stipulates that: "Anyone who has sexual intercourse with a woman without using force, threats or deception but knowing her to be insane, feeble-minded, under 15 years of age, incapable of exercising her own free will for any reason, or knowing her to be unaware of the nature or unlawfulness of the act to which she is being subjected, shall be liable to a penalty of life imprisonment".

Under article 191: "Anyone who uses force, threats or deception to commit an act of indecent assault shall be liable to a penalty of up to 15 years' imprisonment. If the offender is an ascendant of the victim or if he was one of the persons entrusted with the victim's upbringing or welfare or vested with authority over the victim or if he was the victim's servant or a servant of any of the above-mentioned persons, he shall be liable to a penalty of life imprisonment".

Under article 192: "Anyone who indecently assaults a young boy or girl under 21 years of age without using force, threats or deception shall be liable to a penalty of up to 10 years' imprisonment. If the offender is one of the victim's ascendants or if he was one of the persons entrusted with the victim's upbringing or welfare or vested with authority over the victim or if he was the servant of any of the above-mentioned persons, the penalty shall be a term of up to 15 years' imprisonment".

(c) Adultery

Article 195 of the Penal Code stipulates that: "Any married person, whether male or female, who voluntarily has sexual relations with a person other than his or her spouse and is caught in flagrante delicto shall be liable to a penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees".

Article 196 further stipulates that: "If the partner of the adulterous spouse knew, or could have known, that the person with whom he or she committed adultery was married, the said partner shall be liable to a penalty of up to three years' imprisonment and/or a fine of up to 3,000 rupees".

(d) Incitement to debauchery and prostitution

Article 200 of the Penal Code stipulates that: "Anyone who incites a male or female person to commit acts of debauchery or prostitution, or in any way assists therein, shall be liable to a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees. If the victim was under 18 years of age, the penalty shall be a term of up to two years' imprisonment and/or a fine of up to 2,000 rupees".

Article 201 further stipulates that: "Anyone who uses coercion, threats or deception to induce a male or female person to engage in debauchery or prostitution shall be liable to a penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees. If the victim was under 18 years of age, the penalty shall be a term of up to 7 years' imprisonment and/or a fine of up to 7,000 rupees".

(e) Disrespect for religion

Article 109 of the above-mentioned Penal Code stipulates that: "Anyone who, in full awareness of the significance of his acts, destroys, damages or desecrates premises intended for religious observance or commits therein an act prejudicial to the requisite respect for the religion concerned shall be liable to a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees. The same penalty shall apply to anyone who disturbs a lawful gathering held for the purpose of religious observance with a view to disrupting or showing disrespect for the said gathering, or who unlawfully assaults any person attending the said gathering".

Article 111 further stipulates that: "Anyone who, in any of the ways specified in article 101, publicly propagates views implying contempt for or derision or belittlement of a religion or a religious confession in an attempt to discredit its beliefs, observances, rites or teachings shall be liable to a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees".

Under article 113: "Anyone who publishes a book that is held sacred in the faith of any religion and deliberately distorts its text in such a way as to change its meaning with a view to bringing the said religion into disrepute shall be liable to a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees".